

My name is Simon Buckingham and I am the CEO of Appitalism, Inc., an independent universal app store from which consumers can download applications for any mobile device including feature phones and smartphones, headquartered in New York. Appitalism, Inc. is a wholly owned subsidiary of Mobile Streams, Inc., a mobile service provider headquartered in Virginia since 2003. I have personally been working in the wireless telecommunications industry for nearly 20 years since June of 1991 when I started work for Vodafone; a UK-headquartered cellphone carrier. Appitalism is my third start up, following Mobile Streams; which built Ringtones.com, and Zoombak, a location based services subsidiary of Liberty Media. I moved to New York in 1995 and became a U.S. citizen in 2010. I authored the industry report "Yes 2 SMS" in 1999 which accurately predicted the text messaging revolution, after seeing the first ever text message be sent in December of 1992. My contributions to the wireless telecommunications industry have been recognized with many awards, including as one of the 50 Top Executives in Mobile Entertainment in multiple years, a judge of the GSM Association Awards and as a runner-up in the Entrepreneur of the Year Award. I am also Co-Founder of Centurions Connected New York, a networking group for senior digital media executives.

My primary concern relating to the proposed merger of AT&T and T-Mobile centers on the fact that AT&T currently already restricts the ability for its consumers to install Android mobile applications or "apps" from app stores such as Appitalism. AT&T consumers are limited to installing Android apps only from either AT&T's own AppCenter or from the official Google Android Market. AT&T has indicated that it is working to allow its customers to also download apps from an independent app store- the Amazon Appstore- however this access and functionality is not commercially available to AT&T customers yet and no indication or assurances have been given that this capability will also extend to other independent app stores such as Appitalism. (See, for example, <http://thenextweb.com/mobile/2011/03/24/att-looking-to-reverse-amazon-android-appstore-block>). On the other hand, T-Mobile USA does not place any restrictions on which app store its customers can download apps from- the consumer is free to make this choice without restriction. As a result, T-Mobile consumers are free to download apps from any app store as they choose, including from Appitalism.

Mobile applications are an extremely important segment of the mobile market in which competition and innovation need to be protected and enhanced. As David A. Christopher, Chief Marketing Officer of AT&T's Mobility and Consumer Markets business for AT&T Mobility Services LLC, states in his testimony: "Indeed, mobile applications, which are so ubiquitous today, did not exist in any meaningful way five years ago. Today, every major operating system (e.g. Apple, Android, BlackBerry, Windows Phone 7) has its own application marketplace and developer ecosystem. In addition, AT&T and many of its competitors are developing their own applications and also facilitating the development of applications by others. This development has resulted in the U.S. recently emerging as the world leader in smartphone applications. For example, in 2010, Americans downloaded 2 billion

mobile apps, up from just 745 million in 2008, nearly a three-fold increase. The “apps economy,” which barely existed in 2008, is expected to generate \$38 billion in sales in 2015. According to The Wall Street Journal, “[a]lmost no mobile applications were available to consumers in 2007. Today there are more than half a million, and they’re growing at an annual rate of 92%.” (David, Page 12-13, Paragraph 18).

The declaration of John Donovan, the Chief Technology Office for AT&T, states that “Enhanced wireless network capabilities have also attracted completely new competitors, such as Apple and Google, to the wireless marketplace, intensifying competition and innovation still further, as illustrated by the rapid ascent of Google’s Android operating system. Android’s success reflects both the innovative nature of the operating system itself and Google’s parallel development of the Android Market, but Android’s growth is also the result of fierce rivalry among wireless service providers that have added a host of Android-based handsets to their device portfolios and aggressively marketed those devices to consumers. AT&T alone plans to launch twelve new Android devices in 2011”. (Donovan, Page 17, Paragraph 37).

Donovan also states in his testimony that: “In fact, introducing new, innovative services under such circumstances [AT&T’s current network capacity constraints] would even degrade service quality for *existing* services. (Donovan, Page 20, Paragraph 46). Donovan continues: “For the same reasons, absent the transaction, AT&T would have reduced incentives to devote scarce resources to app developer and device maker collaborations and support designed to accelerate the introduction of innovative- but capacity consuming- new devices, applications and services. As described above, AT&T spends considerable time and money collaborating with other actors throughout the wireless ecosystem, including device manufacturers, application developers, and cloud computing partners to develop innovative products and services. It would be difficult to justify continuing that investment at existing levels if the upshot was accelerated introduction of innovations that would further degrade already performance-challenged networks”. (Donovan, Pages 20-21, Paragraph 47).

AT&T’s primary case for the proposed acquisition of T-Mobile to be approved appears from the full testimony to be based around the argument that it can’t handle the services and demand from its consumers adequately now, let alone in the future. I would like to request that in considering the proposed acquisition by AT&T of T-Mobile, you should be taken into account the fact that AT&T already restricts and limits access to third-party services such as Appitalism on its network which compete with its own AppCenter and “official” app stores. These apps downloaded from Appitalism are not significant in their size and do not cause network degradation, yet they are still blocked. Were it to be allowed to acquire T-Mobile USA and become the only nationwide GSM cellphone carrier, it is important that open access to the AT&T network for independent service providers is ensured for the full benefits of competition and innovation in the key applications market to be realized. Following the logic of AT&T’s own argument, if the merger was allowed, it

would need to include the provision that the limits placed on AT&T's consumers to choose which app store they want to download, for example, Android apps, from is removed and stays removed, since the combined network would have the network capacity to handle these services. AT&T should not be able to restrict its customer's choices and control network access by continuing to limit and favor its own apps and app store as this will further reduce the very competition and innovation that AT&T uses as its principle justification for allowing its proposed acquisition to proceed.

Thank you for considering this important point in your deliberation on the proposed acquisition and please do not hesitate to contact me for further information or clarification on this topic.

Respectfully

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